Issuing Personal Protection Orders — Statutory Overview

CHAPTER 6

In This Chapter...

6.1 Chapter Overview

Because domestic violence frequently involves criminal behavior, the main focus of the preceding chapters of this benchbook has been on Michigan's criminal justice response to abusive behavior. Like all other states, however, Michigan also makes use of civil injunctive remedies to protect its citizens from domestic violence. In 1994, the Michigan Legislature created two types of "personal protection order" ("PPO"). These two civil remedies are distinguished according to the relationship between the parties. The "domestic relationship PPO" enjoins abuse in certain domestic relationships that are defined by statute. The "non-domestic stalking PPO" protects victims of stalking, regardless of the relationship between the parties.* These two remedies are the subject of this chapter and Chapters 7 and 8. This chapter surveys the statutory and court rule provisions for issuing PPOs. Chapter 7 discusses common practical concerns in issuing PPOs that are not addressed in the statutes and court rules. Enforcement proceedings are the subject of Chapter 8.

*MCL 600.2950 governs domestic relationship PPOs. MCL 600.2950a governs non-domestic stalking PPOs.

This chapter contains information about:

- The evolution of PPOs.
- The difference between domestic relationship PPOs and non-domestic stalking PPOs.
- The substantive and procedural requirements for issuing PPOs.
- The procedures for dismissing PPO actions.
- The procedures for modifying, extending, and terminating PPOs.
- The limitations of district court peace bonds in domestic violence cases.

6.2 Introduction to Personal Protection Orders

Civil protection orders against domestic violence supplement the protections of the criminal law. This section briefly explores the role that such orders play in combatting domestic violence. It also outlines the development of Michigan's two types of "personal protection order" and highlights the most important features of these orders.

A. The Role of Protection Orders in Combatting Domestic Violence

Every state in the United States has enacted statutes authorizing courts to issue civil protection orders against domestic violence. The relief provided in these statutes is typically tailored to meet the unique circumstances of domestic violence, and so differs from traditional injunctive relief in certain respects. To protect petitioners in emergency situations, for example, state statutes generally give the courts broad authority to award ex parte relief upon a showing of immediate danger or irreparable injury. Moreover, as part of a consistent policy to treat domestic violence as a crime, most states provide for criminal enforcement measures against individuals who violate civil protection orders. Some states mandate warrantless arrest upon probable cause to believe that the restrained party has violated the protection order. Other states, including Michigan, authorize warrantless arrest under those circumstances. In some jurisdictions, including Michigan, violation is subject to criminal contempt sanctions. In other states, violation of a civil protection order constitutes a misdemeanor; in many of these states, contempt is an alternative or additional charge that may be lodged against the violator.*

*See Hart, *State Codes on Domestic Violence*, p 5-22 (Nat'l Council of Juvenile & Family Court Judges, 1992).

In a study of the effectiveness of civil protection orders, the National Center for State Courts ("NCSC") found that such orders were effective to deter domestic abuse, particularly when linked with accessible court processes and public and private support services. After interviewing women who received protection orders in the Family Court in Wilmington, Delaware, the County Court in Denver, Colorado, and the District of Columbia Superior Court, the NCSC study reported the following findings:*

**Civil Protection Orders: The Benefits & Limitations for Victims of Domestic Violence,* p i-xi (Nat'l Center for State Courts, 1997).

- **Civil protection orders assisted petitioners in regaining a sense of well-being.**

  Approximately one month after receiving a civil protection order, three-quarters of the study participants reported that the order had a positive effect on their sense of well-being. After six months, the proportion of participants reporting life improvement increased to 85%. Ninety-five percent of study participants stated that they would seek a protection order again if necessary.*

**Id*. at v, 47-48.

- **In a majority of cases, civil protection orders deterred repeated incidents of physical and psychological abuse.**

  Slightly more than 72% of the study participants reported no violation of their protection orders within the first month after issuance. Slightly more than 65% of participants reported no violation within six months after issuance.*

Id. at 48-49.

- **A combination of civil and criminal remedies may be needed to prevent abuse by persons with a criminal history.**

  Study participants reported a greater number of problems with their protection orders in cases where the restrained party had a prior criminal history. Nonetheless, these same participants were more likely to report an improved sense of well-being after issuance of the civil protection order. The study authors suggest that these findings show the need for both civil and criminal intervention in cases where an abuser has a history of violent crime. Additionally, the study authors noted that safety planning for the abused individual is likely to play a role in the effectiveness of protection orders and other interventions to deter domestic violence.*

Id. at 56-58.

Some researchers have pointed out that a civil protection order can be particularly useful in situations where criminal prosecution is not practicable. Such situations may involve abusive behavior that is not criminal but is nonetheless serious in its long-range potential for harm. Keeping in mind that domestic violence may tend to escalate in severity and frequency over time, a court can issue a civil protection order in the early stages of a violent relationship to address non-criminal abusive behavior before it escalates to the point of serious injury. A civil protection order may also be a useful alternative when the abuse involves misdemeanor conduct (e.g., threats or shoving), and sufficient evidence to prosecute is lacking. In both of these cases, a civil protection order can offer protection and send the abuser a message that the court and society will not tolerate violent behavior.*

*Finn & Colson, *Civil Protection Orders: Legislation, Current Court Practice, & Enforcement,* p 1-3 (Nat'l Inst of Justice, 1990).

B. Development of Protection Orders in Michigan

In Michigan, a civil protection order against domestic abuse is known as a "personal protection order" or "PPO." Although PPOs were first created by the Legislature in 1994, they evolved from earlier forms of injunctive relief against domestic violence.* In 1983, the Michigan Legislature enacted MCL 600.2950, which criminalized the enforcement proceedings for certain injunctions against domestic abuse by providing that violators would be subject to warrantless arrest and criminal contempt sanctions. These stringent enforcement measures applied only under the following limited circumstances, however:

*See Hood & Field, *Domestic Abuse Injunction Law & Practice: Will Michigan Ever Catch Up to the Rest of the Country?* 73 Mich Bar J 902 (1994).

- As enacted in 1983, MCL 600.2950 protected only those victims who had a past or present marriage or cohabitation relationship with the abuser.
- The types of behavior that the court could restrain under MCL 600.2950 were restricted to entry onto premises, assaultive behavior,

and unauthorized removal of minor children from the person having legal custody.

In addition to the foregoing limitations, MCL 600.2950 was inapplicable where a divorce action was pending between the parties. Victims involved in divorce proceedings could obtain similar relief under MCL 552.14, however.

Michigan's 1992 anti-stalking legislation filled some of the gaps in MCL 600.2950. In 1992, the Legislature enacted MCL 600.2950a, which authorized the circuit court to issue injunctions against stalking.* Like MCL 600.2950, the 1992 statute provided that violation of an anti-stalking injunction would be subject to warrantless arrest and criminal contempt sanctions. However, the 1992 statute's protections from abuse were broader than those afforded in MCL 600.2950 in the following respects:

*For discussion of the other provisions of the 1992 anti-stalking legislation, see Section 3.7.

- The protections of MCL 600.2950a extended to any person who was stalked by another, regardless of the stalker's relationship to the victim.
- The protections of MCL 600.2950a extended to a broader range of abusive behavior, such as verbal contact that caused a victim to feel threatened.

By covering a wider range of persons and abusive behaviors, MCL 600.2950a improved the protection that courts could give to domestic abuse victims who were being stalked.* For those cases where anti-stalking relief was not applicable, however, domestic abuse victims were still limited to the relief available under MCL 600.2950 and MCL 552.14.

*Although domestic abuse does not always include stalking, abusers often stalk their victims. See Section 3.7. Stalking is one factor that may indicate that an abuser is likely to resort to lethal violence. See Section 1.4(B).

In 1994, the Michigan Legislature gave the courts' injunctive authority over domestic abuse its current basic shape. Amendments to MCL 600.2950 and MCL 600.2950a created two types of "personal protection order" ("PPO"). These two civil remedies are distinguished according to the relationship between the parties. The "domestic relationship PPO" created under MCL 600.2950 enjoins abuse in certain domestic relationships that are defined by statute. The "non-domestic stalking PPO" created under MCL 600.2950a protects victims of stalking, regardless of the relationship between the parties. As was the case under the earlier versions of these statutes, violators of PPOs issued under the amended statutes are subject to warrantless arrest and criminal contempt sanctions. However, the protections available in a PPO are broader, extending to victims in more categories of relationships, and to more types of abusive behavior.

Since 1994, the Michigan Legislature has enacted many amendments to the PPO and other related statutes to clarify uncertainties about this novel form of relief that have arisen in practice. Of particular significance are amendments enacted in 1999 that provide for issuance and enforcement of a PPO against a respondent under age 18. In 2001, the Michigan Legislature enacted amendments to the PPO and related statutes to ensure that the PPOs are enforced by other states, Indian tribes, and U.S. territories. The amendments also prohibit Michigan courts from issuing a PPO against a respondent under the age of ten.

Because PPO practice continues to evolve, this subject is likely to remain a legislative priority for some time. Accordingly, the reader is cautioned to be alert for statutory and court rule changes that may take place after the publication date of this benchbook.

C. Overview of Michigan's PPO Statutes

Michigan personal protection orders have the following features:

- **PPOs are available to restrain domestic abuse and stalking**.

  The 1994 PPO legislation created two types of protection order, differentiated according to the relationship between the parties. Because domestic abuse is not always confined to parties living in the same household, these two types of PPO encompass a broad range of interpersonal contexts. Under MCL 600.2950(1), the "domestic relationship PPO" protects individuals who live or have lived with the abuser, have a child in common with the abuser, or who have a past or present marriage or dating relationship with the abuser. Under MCL 600.2950a(1), the "non-domestic stalking PPO" protects victims of stalking, regardless of whether they have a relationship with the abuser.

  A PPO should not be used for any dispute that does not involve domestic abuse or stalking as described in the PPO statutes. Neighborhood or work place disputes that do not meet the criteria for a PPO are better addressed by community dispute resolution and district court peace bonds. PPOs are also inappropriate to address domestic relations disputes regarding custody, parenting time, support, or property division. See Section 6.8 on peace bonds. See Sections 7.7, 10.7, and 12.5(B) on the relationship between PPO and domestic relations proceedings.

- **PPOs are available to restrain a broad range of abusive behavior**.

  Domestic violence perpetrators exhibit behavior that includes property destruction, threats, abuse of economic power, and psychological abuse in addition to physical assault of the victim.* Accordingly, the PPO statutes authorize Michigan's courts to restrain a broad range of abusive actions. A "domestic relationship PPO" is available to restrain a number of specified abusive acts, as well as "[a]ny other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence." MCL 600.2950(1)(j). MCL 600.2950a authorizes the court to restrain conduct that is prohibited under the criminal stalking statutes.

  *See Section 1.5 on abusive tactics.

  The type of PPO to use in a given situation is determined by the *relationship* between the parties, *not* by the type of behavior to be restrained. Therefore, if the parties are involved in one of the four types of domestic relationships described in MCL 600.2950(1), a domestic

relationship PPO should be used, even if the abusive behavior constitutes stalking. See MCL 600.2950(1)(i).

- **Upon an appropriate factual showing, relief is available on an ex parte basis without notice to the restrained individual.**

  Because domestic violence perpetrators seek to control their intimate partners, domestic violence may escalate when the abused individual takes steps to escape it.* Since court intervention threatens the abuser's control, initiation of court proceedings may actually increase the danger. Accordingly, a court *must* issue an ex parte PPO if it clearly appears from specific facts that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice, or that notice itself will precipitate adverse action before a PPO can be issued. An ex parte PPO is effective when signed by a judge without written or oral notice to the restrained individual and is immediately enforceable. MCL 600.2950(9), (11)(b), (12), and MCL 600.2950a(6), (8)(b), (9).

*The parties' recent separation is one factor that may indicate that an abuser is likely to resort to lethal violence. See Section 1.4(B).

- **A person under age 18 or a legally incapacitated individual may be a party to a PPO action.**

  The PPO statutes prohibit issuing a PPO against a respondent who is under ten years of age. However, PPOs may be entered for parties under the age of 18. Legislation enacted in 1999 and corresponding court rule amendments set forth specific procedures for cases involving a respondent under age 18. In general, PPO actions with a minor party are subject to the same issuance procedures that apply in actions involving adults, although MCR 3.703(F)(1) requires a petitioner under age 18 or a legally incapacitated individual to proceed through a next friend. Enforcement proceedings against a respondent under age 18 differ significantly from adult enforcement proceedings and are governed by subchapter 3.900 of the Michigan Court Rules. See MCR 3.701(A) and 3.981 on the rules applicable to minor respondents. Moreover, PPO violations by persons under age 17 are subject to the dispositional alternatives listed in the Juvenile Code, MCL 712A.18. The 1999 legislation did not affect the substantive nature of PPOs with minor respondents, so that statutory distinctions between domestic relationship PPOs and non-domestic stalking PPOs (which are described at Sections 6.3 and 6.4) apply regardless of the age of the parties.*

*See Section 8.11 on enforcement of a PPO with a respondent under 18.

- **A PPO may not be issued if the petitioner and respondent have a parent/child relationship and the child is an unemancipated minor.**

  This restriction reflects a legislative policy determination that juvenile delinquency, "incorrigibility," or abuse/neglect proceedings may be better suited for abusive situations involving a parent and child. See MCL 600.2950(27)(a)–(b) and MCL 600.2950a(25)(a)–(b).

- **An ex parte PPO must be valid for at least 182 days**.

  Ex parte PPOs differ from traditional temporary restraining orders in that they are of longer duration. Except in domestic relations actions, a temporary restraining order issued under MCR 3.310(B)(3) expires in 14 days unless extended after a hearing with notice to the adverse party. Because a 14-day period is not long enough to protect victims in many cases, Michigan's PPO statutes set a minimum duration of 182 days for an ex parte PPO and place no maximum limitation on the duration of any PPO. MCL 600.2950(13) and MCL 600.2950a(10). MCR 3.310 is not applicable to petitions for a personal protection order. MCR 3.701(A).

- **Violation of a PPO subjects the alleged offender to warrantless arrest**.

  MCL 764.15b authorizes police to make a warrantless arrest upon reasonable cause to believe that the respondent is violating or has violated a PPO, provided that certain notice requirements are met. To facilitate the warrantless arrest of alleged offenders in emergencies, the PPO statutes provide for entry of the court's order into the LEIN system immediately after issuance. LEIN entry is not a prerequisite for warrantless arrest authority, however. MCL 600.2950(17), (22), and MCL 600.2950a(14), (19).

- **Persons found guilty of violating a PPO are subject to criminal and/or civil contempt sanctions**.

  The Michigan Legislature has determined that persons found guilty of violating a PPO shall be subject to both the criminal and civil contempt powers of the court.* Upon conviction of criminal contempt, an offender age 17 or older shall be imprisoned for not more than 93 days, and additionally, may be fined not more than $500.00. Contempt penalties may be imposed in addition to any criminal penalty that may be imposed for another criminal offense arising from the same conduct. MCL 600.2950(23) and MCL 600.2950a(20).

*Criminal contempt sanctions are far more common. See Chapter 8 on contempt sanctions for violation of a PPO.

6.3 Domestic Relationship Personal Protection Orders Under MCL 600.2950

The Legislature has created two types of personal protection orders, distinguished by the categories of persons who may be restrained:

- "Domestic relationship PPOs" under MCL 600.2950 are available to restrain behavior (including stalking) that interferes with the petitioner's personal liberty, or that causes a reasonable apprehension of violence, if the respondent is involved in certain domestic relationships with the petitioner as defined by the statute.
- "Non-domestic stalking PPOs" under MCL 600.2950a are available to enjoin stalking behavior by any person, regardless of that person's relationship with the petitioner.

This section addresses the substantive prerequisites for issuing domestic relationship PPOs. The substantive prerequisites for issuing non-domestic stalking PPOs are discussed in Section 6.4. Procedures for issuing both types of PPOs are the subject of Section 6.5.

A. Persons Who May Be Restrained

If the respondent falls into any one of the following categories described in MCL 600.2950(1), a domestic relationship PPO is appropriate (even if the offensive behavior amounts to stalking):

- The petitioner's spouse or former spouse.
- A person with whom the petitioner has had a child in common.
- A person who resides *or* who has resided in the same household as the petitioner.
- A person with whom the petitioner has *or* has had a "dating relationship."

The statute puts no time limitation on the foregoing domestic relationships that have occurred in the petitioner's past.

"Dating relationship" is defined in the statute as: "frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context." MCL 600.2950(30)(a).

*See Section 6.5(A) for more information.

A domestic relationship PPO may not be issued if the petitioner and respondent have a parent/child relationship and the child is an unemancipated minor. MCL 600.2950(27)(a)–(b). If there is no such parent/child relationship, however, a person under age 18 may be a party to a PPO action.* A PPO may not be issued if the respondent is less than ten years of age. MCL 600.2950(27)(c).

1. Residents of the Petitioner's Household

MCL 600.2950(1) permits the court to restrain "an individual residing or having resided in the same household as the petitioner." Although the statute specifically prohibits issuance of a domestic relationship PPO if the petitioner and respondent have a parent/child relationship and the child is an unemancipated minor, MCL 600.2950(27), it contains no other limitations as to the nature of the relationship between a petitioner and respondent living in the same household.

Note: The Court of Appeals has addressed the scope of similar language in the criminal domestic assault statute, MCL 750.81(2).* In *In re Lovell*, 226 Mich App 84 (1997), the prosecutor filed a petition charging a 16-year-old girl with assaulting her mother under MCL 750.81(2). The probate court refused to issue the petition, holding that the statute did not apply to assaults by children against parents. The prosecutor appealed to the circuit court, which also affirmed. The Court of Appeals reversed the lower courts' decision, holding that:

*The domestic assault statute applies to a person who assaults "a resident or former resident of his or her household." This statute is discussed in Section 3.2.

> "When a statute is clear and unambiguous, judicial interpretation is precluded. . . . Courts may not speculate regarding the probable intent of the Legislature beyond the words expressed in the statute. . . . [The statute] applies to offenders who resided in a household with the victim at or before the time of the assault. . . regardless of the victim's relationship with the offender." 226 Mich App at 87.

In so holding, the Court expressed no opinion as to whether its holding would permit application of the statute to assaultive behavior between college roommates who were not romantically involved. The dissenting judge on the *Lovell* panel would have required residence in the household plus a romantic involvement to trigger coverage under MCL 750.81(2).

2. Mutual Orders Prohibited

The court may not issue mutual personal protection orders. However, correlative separate orders are permitted if both parties properly petition the court, and the court makes separate findings that support an order against each party.* MCL 600.2950(8) and MCR 3.706(B). The court has no authority under the Michigan PPO statutes to accept the parties' stipulation to a mutual protection order.

*See also Section 7.4(E) on practical problems with mutual orders.

Note: The federal statute requiring that full faith and credit be given to civil protection orders has limited application to mutual protection orders. See 18 USC 2265(c), discussed in Section 8.13(B)(2).

B. Prohibited Conduct

Under MCL 600.2950(1)(a)–(j), a domestic relationship PPO may enjoin one or more of the following acts:

> "(a) Entering onto premises.
>
> "(b) Assaulting, attacking, beating, molesting, or wounding a named individual.

*The named individual need not be the petitioner.

*See Sections 6.5(B)(4) and 6.7(B) regarding respondents who carry a firearm as a condition of employment. See Sections 7.5(B) and 9.7-9.8 on firearms disabilities resulting from entry of a PPO.

> "(c) Threatening to kill or physically injure a named individual.*
>
> "(d) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.
>
> "(e) Purchasing or possessing a firearm.*
>
> "(f) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
>
> "(g) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.
>
> "(h) Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address.
>
> "(i) Engaging in conduct that is prohibited under . . . MCL 750.411h and 750.411i [i.e., stalking and aggravated stalking].
>
> "(j) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence."

In *Brandt v Brandt,* 250 Mich App 68, 69 (2002), the trial court entered a PPO prohibiting the respondent from contacting his children. The trial court later modified the PPO to allow the respondent parenting time with his children. The respondent argued on appeal that the trial court did not have the authority to modify a PPO to include parenting time. The respondent asserted that custody and parenting time determinations may only be made in a child custody proceeding after a court has examined the "best interests of the child" factors. The Court of Appeals upheld the trial court's order, indicating that a trial court may restrain individuals from doing certain acts under MCL 600.2950(1). The Court further stated that MCL 600.2950(1)(j), the "catchall" provision, clearly provides a trial court with the authority to restrain a respondent from any action that "interferes with personal liberty" or might cause "a reasonable apprehension of violence." 250 Mich App at 70. The Court stated:

> "This statutory provision allows the trial court to restrain respondent from 'any other specific act or conduct . . . that causes a reasonable apprehension of violence.' [MCL 600.2950(1)(j)]. There is no question that it would be reasonable for petitioner to fear that respondent might become violent with petitioner if she were forced to permit respondent to visit the children or exchange

> the children for parenting time. Additionally, this interpretation is entirely consistent with the remainder of the statute, which makes it clear that the Legislature recognized that access to the children may need to be restrained to protect the safety of a parent. See MCL 600.2950(1)(d), (f) and (h)." 250 Mich App at 70–71.

The respondent also argued that there was no statutory basis to restrain his contact with his children because the petitioner did not allege that the respondent was violent towards the children. The Court of Appeals disagreed, finding that the petitioner did not need to allege that the respondent was physically violent towards the children. The petitioner's allegations that the respondent was physically violent toward her while in the children's presence and was becoming increasingly more violent provided a sufficient basis for the trial court to enter an order that included prohibiting contact with the children. 250 Mich App at 71.

Under MCL 600.2950(5), the court may *not* restrain the respondent from entering onto premises if *all* of the following apply:

> "(a) The individual to be restrained or enjoined is not the spouse of the moving party.
>
> "(b) The individual to be restrained or enjoined or the parent, guardian, or custodian of the minor to be restrained or enjoined has a property interest in the premises.
>
> "(c) The moving party or the parent, guardian, or custodian of a minor petitioner has no property interest in the premises."

A PPO restraining the respondent from entering onto premises is likely to affect significant parental and property rights. If the situation does not involve domestic abuse or stalking as described in the PPO statutes, a PPO is inappropriate to address domestic relations disputes regarding custody, parenting time, support, or property division.*

*For discussion of constitutional concerns with PPOs, see Section 7.5. The relationship between PPO and domestic relations actions is addressed in Sections 7.7, 10.7, and 12.5(B).

C. Standard for Issuing a Domestic Relationship PPO

The burden of proof that a domestic relationship PPO should issue is on the petitioner because the court must make a positive finding of prohibited behavior by the respondent before issuing a PPO. *Kampf v Kampf*, 237 Mich App 377, 386 (1999).

MCL 600.2950(4) articulates the standard for issuing a domestic relationship PPO as follows:

> "The court *shall* issue a personal protection order under this section if the court determines that there is *reasonable cause* to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in [MCL 600.2950(1)].* In determining

*These acts are listed in Section 6.3(B).

whether reasonable cause exists, the court shall consider all of the following:

> "(a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.
>
> "(b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in [MCL 600.2950(1)]." [Emphasis added.]

In a criminal case, "reasonable cause" is shown by facts leading a fair-minded person of average intelligence and judgment to believe that an incident has occurred or will occur. See *People v Richardson,* 204 Mich App 71, 79 (1994), construing the term "reasonable cause" in the warrantless arrest statute, MCL 764.15(1)(c). In a case involving a warrantless arrest for violation of a PPO, the Court of Appeals noted that "reasonable cause" to make an arrest means "having enough information to lead an ordinarily careful person to believe that the defendant committed a crime. CJI2d 13.5(4)." *People v Freeman,* 240 Mich App 235 (2000).

Under MCL 600.2950(6), the court may not refuse to issue a PPO solely due to the absence of:

- A police report;*
- A medical report;
- An administrative agency's finding or report; or,
- Physical signs of abuse or violence.

*See Section 4.2 on police reports.

MCL 600.2950(12) sets forth the following standard for cases in which the petition requests an ex parte PPO:

> "An ex parte personal protection order shall be issued and effective without written or oral notice to the individual restrained or enjoined or his or her attorney if it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued."*

*See also MCR 3.703(G), which contains similar language. Ex parte proceedings are further discussed in Sections 6.5(C), 7.3, and 7.5.

The mandatory language in the above provision differs from the corresponding standard for issuing an ex parte PPO under the non-domestic stalking PPO statute. See MCL 600.2950a(9), cited in Section 6.4(D), which provides that an ex parte stalking PPO "shall *not* be issued . . . *unless* it clearly appears from specific facts . . . that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will precipitate adverse action before a personal protection order can be issued."

The Michigan Court of Appeals has held that an ex parte personal protection order issued under MCL 600.2950(12) does not violate due process. *Kampf v Kampf, supra*, 237 Mich App at 383-385. For further discussion, see Section 7.5.

6.4 Non-domestic Stalking Personal Protection Orders Under MCL 600.2950a

The Legislature has created two types of personal protection orders, distinguished by the categories of persons who may be restrained:

- "Non-domestic stalking PPOs" under MCL 600.2950a are available to enjoin stalking behavior by any person, regardless of that person's relationship with the petitioner.
- "Domestic relationship PPOs" under MCL 600.2950 are available to enjoin behavior (including stalking) that interferes with the petitioner's personal liberty, or that causes a reasonable apprehension of violence if the respondent is involved in certain domestic relationships with the petitioner as defined by the statute.

This section addresses the substantive prerequisites for issuing non-domestic stalking PPOs. The substantive prerequisites for issuing domestic relationship PPOs are discussed in Section 6.3. Procedures for issuing both types of PPOs are addressed in Section 6.5.

A. Persons Who May Be Restrained

MCL 600.2950a authorizes the family division of circuit court to issue a PPO restraining stalking as defined in MCL 750.411h, or aggravated stalking as defined in MCL 750.411i. This relief is available without the need to establish a prior relationship between the petitioner and the respondent. A non-domestic stalking PPO is thus available to restrain *anyone* ten years of age or older who is stalking, including a stranger to the petitioner.

> **Note:** Since non-domestic stalking PPOs are distinguished from domestic relationship PPOs by the *relationship* between the parties, the Advisory Committee for this chapter of the benchbook recommends that the domestic relationship PPO be used if the parties are involved in one of the four types of relationships described in MCL 600.2950(1), even if the abusive behavior constitutes stalking. Note that the domestic relationship PPO statute specifically authorizes the court to restrain stalking. MCL 600.2950(1)(i).

The court may not issue mutual personal protection orders. However, correlative separate orders are permitted if both parties properly petition the court, and the court makes separate findings that support an order against each party.* MCL 600.2950a(5) and MCR 3.706(B). The court has no authority

*See also Section 7.4(E) on practical problems with mutual orders.

under the Michigan PPO statutes to accept the parties' stipulation to a mutual protection order.

> **Note:** The federal statute requiring that full faith and credit be given to civil protection orders has limited application to mutual protection orders. See 18 USC 2265(c), discussed in Section 8.13(B)(2).

A non-domestic stalking PPO may not be issued if the petitioner and respondent have a parent/child relationship and the child is an unemancipated minor. MCL 600.2950a(25)(a)–(b). If there is no such parent/child relationship, however, a person under age 18 may be a party to a PPO action. See Section 6.5(A) for more information. A non-domestic stalking PPO may not be issued against a respondent under the age of ten. MCL 600.2950a(25)(c).

B. Petitioner May Not Be a Prisoner

A court must not enter a non-domestic stalking PPO if the petitioner is a prisoner. MCL 600.2950a(28). A "prisoner" is a "person subject to incarceration, detention, or admission to a prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for violations of federal, state, or local law or the terms and conditions of parole, probation, pretrial release, or a diversionary program." MCL 600.2950a(29)(d).

If a PPO is issued in violation of the foregoing prohibition, the court must rescind the PPO upon notification and verification that the petitioner is a prisoner. MCL 600.2950a(28).

C. Prohibited Conduct — Stalking and Aggravated Stalking

MCL 600.2950a permits the circuit court to restrain **stalking** and **aggravated stalking** as defined in the criminal stalking statutes.*

*The PPO statutes do not mention electronic stalking, discussed in Section 3.10.

"**Stalking**" is a misdemeanor under MCL 750.411h. Subsection (1)(d) of this statute defines "stalking" as:

- "[A] willful course of conduct involving repeated or continuing harassment of another individual";
- "[T]hat would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested"; and,
- "[T]hat actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested."

> **Note:** In a criminal prosecution for stalking, evidence that the defendant continued to make unconsented contact with the victim after the victim requested the defendant to cease doing so raises a rebuttable presumption that the continued contact caused the

victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested. MCL 750.411h(4).

The following definitions further explain this offense:

- A "course of conduct" means "a pattern of conduct composed of a series of 2 or more separate, non-continuous acts evidencing a continuity of purpose." MCL 750.411h(1)(a).
- "Harassment" means conduct including, but not limited to, "repeated or continuing unconsented contact, that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose." MCL 750.411h(1)(c).
- Under MCL 750.411h(1)(e), "unconsented contact" means "any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued." Unconsented contact includes, but is not limited to:
  - Following or appearing within the victim's sight.
  - Approaching or confronting the victim in a public place or on private property.
  - Appearing at the victim's workplace or residence.
  - Entering onto or remaining on property owned, leased, or occupied by the victim.
  - Contacting the victim by phone, mail, or electronic communications.
  - Placing an object on, or delivering an object to, property owned, leased, or occupied by the victim.
- "Emotional distress" means "significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling." MCL 750.411h(1)(b).

In *Pobursky v Gee*, 249 Mich App 44 (2001), the Court of Appeals found a single unwanted contact that included a threat and an assault did not amount to stalking and therefore the non-domestic stalking PPO should not have been entered. The petitioner obtained a PPO on the ground that the respondent had attacked him. The attack consisted of the respondent hurling the petitioner over a bench and into a wall, where the respondent proceeded to choke and threaten to kill the petitioner. 249 Mich App at 45. The respondent moved to terminate the order, arguing that the petition was insufficient to justify entry of a PPO because it alleged a single unwanted contact that did not constitute stalking. The trial court denied the motion to terminate the order. The Court of Appeals reversed the trial court's denial of the motion. 249 Mich App at 48. The Court of Appeals turned to the definition of stalking contained in MCL 750.411h(2), which provides, in part, that stalking is a "willful course of conduct involving repeated or continuing harassment of another individual . . . ." The Court of Appeals noted that "course of conduct" is defined as "a pattern of conduct composed of a series of 2 or more separate noncontinuous

acts evidencing a continuity of purpose." The Court held that "two or more separate noncontinuous acts are acts distinct from one another that are not connected in time and space." 249 Mich App at 47. The Court concluded that although the petitioner alleged a series of acts evidencing a continuity of purpose, the acts were not separate and noncontinuous and therefore they did not meet the definition provided under the stalking statute. 249 Mich App at 48.

Under MCL 750.411i(2)(a)–(d), a person who engages in stalking is guilty of the felony of **aggravated stalking** if the violation involves any of the following circumstances:

- At least one of the actions constituting the offense is in violation of a restraining order of which the offender has actual notice, or at least one of the actions is in violation of an injunction or preliminary injunction. There is no language in the aggravated stalking statute stating that the order violated must have been issued by a Michigan court — violations of other state or tribal protection orders may also constitute aggravated stalking.
- At least one of the actions constituting the offense is in violation of a condition of probation, parole, pretrial release, or release on bond pending appeal.
- The person's conduct includes making one or more credible threats against the victim, a family member of the victim, or another person living in the victim's household. Under MCL 750.411i(1)(b), a "credible threat" is a "a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual."
- The offender has been previously convicted of violating either of the criminal stalking statutes.

*See also Sections 7.5(B) and 9.7-9.8 on firearms disabilities resulting from entry of a PPO.

In addition to conduct prohibited under the criminal stalking and aggravated stalking statutes, a non-domestic stalking PPO may enjoin an individual from purchasing or possessing a firearm. MCL 600.2950a(23). Special procedural requirements apply where the restrained party is issued a license to carry a concealed weapon and is required to carry a firearm as a condition of his or her employment. See Sections 6.5(B)(4) and 6.7(B) for more details.*

*See Section 6.8 on peace bonds.

A non-domestic stalking PPO is not an appropriate method for dealing with disputes between neighbors or coworkers in which the parties' behavior is not of the type described in the criminal stalking and aggravated stalking statutes. Community dispute resolution and district court peace bonds are better ways of addressing such disputes.*

D. Standard for Issuing a Non-Domestic Stalking PPO

Relief under the non-domestic stalking PPO statute shall *not* be granted *unless*:

> "the petition alleges facts that constitute stalking as defined in . . . MCL 750.411h and 750.411i. Relief may be sought and granted under this section whether or not the individual to be restrained or enjoined has been charged or convicted under . . . MCL 750.411h and 750.411i, for the alleged violation." MCL 600.2950a(1).

MCL 600.2950a(9) sets forth the following standard for cases in which the petition requests an ex parte PPO:

> "An ex parte personal protection order shall not be issued and effective without written or oral notice to the individual enjoined or his or her attorney unless it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued."*

*See also MCR 3.703(G), which contains similar language. Ex parte proceedings are further discussed in Sections 6.5(C), 7.3, and 7.5.

This standard does not contain the mandatory language that appears in the corresponding provision of the domestic relationship PPO statute. See MCL 600.2950(12), cited in Section 6.3(C).

6.5 Procedures for Issuing PPOs

In cases where the parties are age 18 or older, identical procedural requirements apply to the issuance of both domestic relationship PPOs under MCL 600.2950 and non-domestic stalking PPOs under MCL 600.2950a.* In addition to the PPO statutes, subchapter 3.700 of the Michigan Court Rules governs issuance procedures for both types of PPO.

*On the substantive prerequisites for issuing PPOs, see Sections 6.3 (domestic relationship PPOs) and 6.4 (non-domestic stalking PPOs).

PPO actions with a petitioner under age 18 are generally subject to the same issuance procedures that apply in actions with an adult petitioner, although MCR 3.703(F)(1) requires a minor petitioner or a legally incapacitated individual to proceed through a next friend. See Section 6.5(A) for more information about minor parties to PPO actions.

If the respondent is under age 18, issuance of either type of PPO is subject to the Juvenile Code, MCL 712A.1 to 712A.32. MCL 600.2950(28) and MCL 600.2950a(26). Issuance proceedings in PPO actions under the Juvenile Code are governed by subchapter 3.700 of the Michigan Court Rules, so that they are substantially similar to actions involving an adult respondent. See MCR 3.701(A), 3.981. Subchapter 3.700 contains some special provisions for issuing PPOs with a minor respondent, however, particularly in the areas of venue and service of process.

Generally, the provisions of MCR 3.310 (regarding injunctions) and MCR 2.119 (regarding motions) do not apply to a PPO action. See MCR 3.701(A) and 3.702(2). However, the procedures contained in MCR 3.310 apply to PPO

actions only to the extent that they do not conflict with special procedures prescribed by the statute or the rules governing a specific action. MCR 3.310(I). In *Pickering v Pickering,* 253 Mich App 694, 699 (2002), the Court held that the PPO statutes and the court rules are silent on the issue of the burden of proof in a hearing on a motion to rescind or terminate a PPO and that the procedures in MCR 3.310(B)(5) do not conflict with the PPO statutes or court rules. Therefore, the procedures in MCR 3.310(B)(5) are controlling.

A. Minors and Legally Incapacitated Individuals as Parties to a PPO Action

A PPO may not be issued if the petitioner and respondent have a parent/child relationship and the child is an unemancipated minor. MCL 600.2950(27) and MCL 600.2950a(25)(a)–(b). If there is no such parent/child relationship, however, a person under age 18 may be a party in a PPO action. A child under the age of ten may not be a respondent in a PPO action. MCL 600.2950a(25)(c).

1. Minors as Petitioners

*A "minor" is a person under age 18 for purposes of subchapter 3.700. MCR 3.702(6).

If the petitioner is a minor* or a legally incapacitated individual, MCR 3.703(F)(1) provides that he or she "shall proceed through a next friend." The petitioner must certify that the next friend is an adult who is not disqualified by statute. *Id.* MCR 3.703(F)(2) provides that:

> "Unless the court determines appointment is necessary, the next friend may act on behalf of the minor or legally incapacitated person without appointment. However, the court *shall* appoint a next friend if the minor is less than 14 years of age. The next friend is not responsible for the costs of the action." [Emphasis added.]

2. Minors as Respondents

*Violations committed on or after the respondent's 17th birthday are subject to adult *penalties*, however. MCL 600.2950(11)(a)(i) and MCL 600.2950a(8)(a)(i). See Section 8.11(I) for more information.

MCL 712A.2(h) gives the family division of circuit court jurisdiction over minor respondents in PPO proceedings under both the domestic relationship and non-domestic stalking PPO statutes. If the court exercises its jurisdiction under this provision, jurisdiction continues until the order expires, even if the respondent reaches adulthood during that time. MCL 712A.2a(3). However, "action regarding the personal protection order after the respondent's eighteenth birthday shall not be subject to [the Juvenile Code]." *Id*. Instead, the court would apply adult PPO laws and procedures to actions regarding the PPO after the respondent's 18th birthday. MCR 3.708(A)(2).*

A court may appoint a guardian ad litem for a minor involved as a respondent in a PPO proceeding under MCL 712A.2(h). See MCL 712A.17c(10), which provides:

> "To assist the court in determining a child's best interests, the court may appoint a guardian ad litem for a child involved in a proceeding under [the Juvenile Code]."

A guardian ad litem is an officer of the court, not a representative of a party. A guardian ad litem may be called as a witness in the proceeding. For a court rule governing guardians ad litem, see MCR 3.916(A), which provides that "[t]he court may appoint a guardian ad litem for a party if the court finds that the welfare of the party requires it." This court rule applies to delinquency and child protective proceedings (MCR 3.901(B)(1)), and appears to apply to PPO enforcement proceedings (see e.g., MCR 3.985(B)(1)).

B. Filing Requirements; Concurrent Proceedings

A petition for a PPO is filed in family division of circuit court. See MCL 600.1021(1)(k) (adult respondent) and MCL 712A.2(h) (minor respondent). The petition must be filed as an independent action. MCR 3.702(2). A PPO action may not be commenced by filing a motion in an existing case or by joining a claim to an action. MCR 3.703(A). Because court rules supersede procedural rules set forth in statute, MCR 3.703(A) abrogates statutory provisions that would permit a PPO petition to be joined as a claim with another action or filed as a motion in a pending action.* Treatment of the PPO petition as a separate action protects the petitioner by ensuring that the PPO will not automatically terminate upon conclusion of the separate matter in which it would otherwise have been filed or joined under the statutes.

*MCR 1.104.

1. Venue

In cases with a respondent age 18 or older, venue to issue a PPO lies in any county in Michigan, regardless of the parties' residency. MCR 3.703(E)(1). This broad venue provision protects petitioners who have fled from their places of residence to escape violence.

In cases where the respondent is under age 18, venue is proper in the county of residence of either the petitioner or respondent. If the respondent does not live in this state, venue for the initial action is proper in the petitioner's county of residence. MCL 712A.2(h) and MCR 3.703(E)(2).

> **Note:** A Michigan court has personal jurisdiction over Native Americans who initiate actions under Michigan's PPO statutes. Native Americans are citizens of the United States and of the states and counties where they reside. US Const, Am XIV; 8 USC 1401(b). To ensure the validity of orders issued in PPO actions brought by Native Americans, a Michigan court should also consider whether it has personal jurisdiction over the respondent and subject matter jurisdiction to issue the relief requested. See Section 8.13(A)(1) for more discussion of Michigan courts' jurisdictional limitations in cases involving Native American persons and property.

2. Filing Fee

There is no fee for filing a PPO petition, and no summons is issued. MCL 600.2529(1)(a) and MCR 3.703(A).

> **Note:** Under the federal Violence Against Women Act, 42 USC 3796gg-3796gg-5, Michigan receives financial assistance for developing and strengthening effective law enforcement and prosecution strategies and victim services in cases involving violent crimes against women. To be eligible to receive federal grants under this program, a state must certify that its "*laws, policies, and practices do not require*, in connection with the prosecution of any misdemeanor or felony domestic violence offense, *that the victim bear* the costs associated with the filing of criminal charges against the domestic violence offender, or *the costs associated with the issuance or service of a* warrant, *protection order*, and witness subpoena (arising from the incident that is the subject of the arrest or criminal prosecution)." 28 CFR 90.15(a)(1) [emphasis added].

3. Distributing and Completing Forms

Pursuant to MCL 600.2950b and MCR 3.701(B), the State Court Administrative Office has approved standardized PPO forms. These forms are intended for use by parties who wish to proceed without an attorney. Regarding distribution of the forms, MCL 600.2950b(4) provides as follows:

> "The court shall provide a form prepared under this section without charge. Upon request, the court may provide assistance, but not legal assistance,* to an individual in completing a form prepared under this section and the personal protection order form if the court issues such an order, and may instruct the individual regarding the requirements for proper service of the order."

*For information on providing assistance, see *Legal Advice v Access to the Courts, Do YOU Know the Difference?* (MJI, 1997).

MCR 3.701(B) similarly provides that PPO forms approved by the State Court Administrative Office "shall be made available for public distribution by the clerk of the circuit court."

Courts are authorized by statute to provide domestic violence victim advocates to assist petitioners in obtaining a PPO. A court may use the services of a public or private agency or organization that has a record of service to victims of domestic violence to provide the assistance. MCL 600.2950c(1). For more information about this type of assistance, see Section 7.2(B).

4. Contents of the Petition

MCR 3.703(B) and (D) address the contents of the petition. Under MCR 3.703(B), the petition must:

> "(1) be in writing;
>
> "(2) state with particularity the facts on which it is based;
>
> "(3) state the relief sought and the conduct to be restrained;
>
> "(4) state whether an ex parte order is being sought;
>
> "(5) state whether a personal protection order action involving the same parties has been commenced in another jurisdiction; and
>
> "(6) be signed by the party or attorney as provided in MCR 2.114. The petitioner may omit his or her residence address from the documents filed with the court, but must provide the court with a mailing address."*

*See also MCL 600.2950(3), MCL 600.2950a(3), and Section 7.4(C) on protecting the petitioner's address.

Under MCR 3.703(D)(1), the petitioner must notify the court about other pending actions, orders, or judgments affecting the parties to a personal protection action. The court rule provides:

> "The petition must specify whether there are any other pending actions in this or any other court, or orders or judgments already entered by this or any other court affecting the parties, including the name of the court and the case number, if known."

Where the respondent is under age 18, MCR 3.703(C) additionally requires that the petition must list the respondent's name, address and either age or date of birth. Moreover, the petition must list the names and addresses of the respondent's parent or parents, guardian, or custodian, if this is know or can be easily ascertained.

Petitioners are required to notify the court if they know that the respondent has been issued a license to carry a concealed weapon and is required to carry a weapon as:

- A condition of his or her employment;
- A police officer certified under MCL 28.601 to 28.616;
- A sheriff;
- A deputy sheriff or a member of the Michigan Department of State Police;
- A local corrections officer;
- A Department of Corrections employee; or
- A federal law enforcement officer who carries a firearm during the normal course of his or her employment. MCL 600.2950(2) and MCL 600.2950a(2).

This notice requirement does not apply to petitioners who do not know the respondent's occupation. MCL 600.2950(2) and MCL 600.2950a(2).

A "federal law enforcement officer" means "an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is the enforcement of laws of the United States." MCL 600.2950(30)(b) and MCL 600.2950a(29)(a).

Persons who knowingly and intentionally make false statements to the court in support of a PPO petition may be in contempt of court. MCL 600.2950(24) and MCL 600.2950a(21).

> **Note:** Some courts consider a petitioner's resumption of contact with the respondent to be an act in contempt of court. The PPO statutes and court rules do not address this circumstance. See Section 1.6 on the dynamics of domestic violence that might be present when an abused individual returns to an abuser. Suggestions for dealing with a petitioner who resumes contact with a respondent or otherwise abandons a PPO proceeding are found at Section 7.6.

5. Other Proceedings Prior to or Concurrent with PPO

MCR 3.703(D) and MCR 3.706(C) contain procedural requirements for situations where there are other pending actions or prior orders or judgments affecting the parties to the PPO petition:

- If the PPO petition is filed in the same court where the pending action was filed or the prior order or judgment was entered, the PPO petition shall be assigned to the same judge. MCR 3.703(D)(1)(a).
- If there are pending actions in another court or orders or judgments already entered by another court affecting the parties, the court in which the PPO petition was filed should contact the other court, if practicable, to determine any relevant information. MCR 3.703(D)(1)(b).
- If a prior court action resulted in an order providing for continuing jurisdiction of a minor, and the petition requests relief with regard to the minor, the court considering the PPO petition must comply with the notice requirements of MCR 3.205. MCR 3.703(D)(2).
- If there is an existing custody or parenting time order between the parties, "[t]he court issuing a personal protection order must contact the court having jurisdiction over the parenting time or custody matter as provided in MCR 3.205, and where practicable, the judge should consult with that court, as contemplated in MCR 3.205(C)(2), regarding the impact upon custody and parenting time rights before issuing the personal protection order." MCR 3.706(C)(1).
- MCR 3.706(C)(2)-(3) provide as follows regarding the relationship between a PPO and an existing custody or parenting time order:

  > "(2) Conditions Modifying Custody and Parenting Time Provisions. If the respondent's custody or parenting time rights will be adversely affected by the personal protection order, the issuing court shall determine whether conditions should be specified in the order which would accommodate the

respondent's rights or whether the situation is such that the safety of the petitioner and minor children would be compromised by such conditions.

"(3) Effect of Personal Protection Order. A personal protection order takes precedence over any existing custody or parenting time order until the personal protection order has expired, or the court having jurisdiction over the custody or parenting time order modifies the custody or parenting time order to accommodate the conditions of the personal protection order.

"(a) If the respondent or petitioner wants the existing custody or parenting time order modified, the respondent or petitioner must file a motion with the court having jurisdiction of the custody or parenting time order and request a hearing. The hearing must be held within 21 days after the motion is filed.

"(b) Proceedings to modify custody and parenting time orders are subject to subchapter 3.200."

For more discussion of the relationship between a PPO and an existing custody or parenting time order, see Sections 7.7 and 12.5(B).

6. Assignment to Judge

If a PPO petition is filed in the same court as a pending action or where a prior order or judgment has been entered affecting the parties, the PPO petition shall be assigned to the same judge. MCR 3.703(D)(1)(a).

If the respondent is under age 18, the court may *not* assign a referee to preside at a hearing on the issuance of a PPO. MCR 3.912(A)(4).* A judge must preside at proceedings to issue a minor PPO. *Id*.

*Nonattorney referees may conduct preliminary hearings for enforcement of a PPO. Referees licensed to practice law may preside at a hearing to enforce a minor PPO. MCR 3.913(A)(2)(d). See Section 8.11(B).

C. Ex Parte Proceedings

The court must rule on a request for an ex parte PPO within 24 hours of the filing of the petition. MCR 3.705(A)(1).

Note: The standard for issuing an ex parte PPO differs depending on whether the PPO is a domestic relationship PPO or a non-domestic stalking PPO. See Sections 6.3(C) and 6.4(D) for comparison of the two standards.

If the court issues an ex parte PPO, MCR 3.705(A)(2) requires that "[a] permanent record or memorandum must be made of any nonwritten evidence, argument or other representations made in support of issuance of an ex parte order." The court has some flexibility in making this record or memorandum. Some judges require the petitioner to appear on the record before the court,

while others consider only the allegations in the petition. For more discussion of making a record in ex parte proceedings, see Section 7.3.

"In a proceeding under MCL 600.2950a, the court must state in writing the specific reasons for issuance of the order." *Id*. MCL 600.2950a(4) requires the court to immediately state in writing and, if a hearing is held, on the record the specific reasons for issuing a non-domestic stalking PPO. MCL 600.2950a(4) provides:

> "*If a court refuses to grant a personal protection order*, the court shall immediately state in writing the specific reasons for *issuing* or refusing to issue a personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons for issuing or refusing to issue a personal protection order." [Emphasis added.]
>
> **Note:** MCL 600.2950a(4) begins with the qualifying phrase, "If a court refuses to grant a personal protection order," and then requires a court to state the reasons for *issuing* or denying a personal protection order. Although the statute has contradictory language, the recommended procedure when issuing or denying a non-domestic stalking PPO is to state in writing and, if a hearing is held, on the record the specific reasons for issuing or denying the PPO. The requirement to state the reasons for issuing a PPO does not apply to domestic relationship PPOs. See MCL 600.2950(7).

If the court denies the petition for ex parte relief, it must:

- Immediately state specific reasons in writing. If a hearing is held, the court shall also immediately state on the record the specific reasons it refused to issue a PPO. MCL 600.2950(7), MCL 600.2950a(4), and MCR 3.705(A)(5).
- Advise the petitioner of the right to request a hearing. The court is excused from giving this advice if it "determines after interviewing the petitioner that the petitioner's claims are sufficiently without merit that the action should be dismissed without a hearing." MCR 3.705(A)(5).
- Schedule a hearing as soon as possible if the petitioner requests one. MCR 3.705(B)(1)(b). If the petitioner does not request a hearing within 21 days of entry of the court's order denying the request for an ex parte PPO, the court's order is final. MCR 3.705(A)(5). The court does not have to schedule a hearing if it "determines after interviewing the petitioner that the claims are sufficiently without merit that the action should be dismissed without a hearing." MCR 3.705(B)(1).

The Michigan Court of Appeals has held that an ex parte personal protection order issued under MCL 600.2950(12) does not violate due process. *Kampf v Kampf*, 237 Mich App 377, 383-385 (1999). For further discussion, see Section 7.5.

D. Hearing Procedures

1. Scheduling a Hearing

Under MCR 3.705(B)(1), the court must schedule a hearing as soon as possible if:

- The petition does not request an ex parte order; or
- The court denies the petitioner's request for an ex parte order and the petitioner requests a hearing.

In both of the above circumstances, the court is excused from scheduling a hearing if it "determines after interviewing the petitioner that the claims are sufficiently without merit that the action should be dismissed without a hearing." MCR 3.705(B)(1).

If the respondent is under age 18, the court may *not* assign a referee to preside at a hearing on the issuance of a PPO. MCR 3.912(A)(4).* A judge must preside at proceedings to issue a minor PPO. *Id*.

*Nonattorney referees may conduct preliminary hearings for enforcement of a PPO. Referees licensed to practice law may preside at a hearing to enforce a minor PPO. MCR 3.913(A)(2)(d). See Section 8.11(B).

2. Service of Notice of Hearing

After the court schedules a hearing, the petitioner must arrange for service of the petition and notice of the hearing on the respondent at least one day before the hearing. MCR 3.705(B)(2). The petitioner may not make service; service must be made by a legally competent adult who is not a party to the action. MCR 2.103(A). Service on the respondent shall be made pursuant to MCR 2.105(A), which provides for service on a resident or nonresident by:

- Delivery to the respondent personally; or
- Delivery by registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the respondent acknowledges receipt of the mail. A copy of the return receipt signed by the respondent must be attached to the proof showing service.

If the respondent is under age 18, and the whereabouts of the respondent's parent or parents, guardian, or custodian is known, service must also be similarly made on one of these individuals. MCR 3.705(B)(2).

3. Making a Record

The court must hold any hearing on a PPO petition on the record. MCR 3.705(B)(3). At the conclusion of a hearing on a PPO petition, the court shall immediately state the reasons for granting or denying a personal protection order on the record and enter an appropriate order. In addition, the court shall immediately state its reasons for denying a personal protection order in writing. MCL 600.2950(7), MCL 600.2950a(4), and MCR 3.705(B)(6). If the petition sought a non-domestic relations stalking PPO, the court must

immediately state in writing the specific reasons for issuing the PPO. MCL 600.2950a(4) and MCR 3.705(B)(6).

> **Note**: The court should indicate the grounds for issuing the PPO, regardless of the type of PPO, in the order itself in order to help facilitate the enforcement of federal firearms restrictions. See Section 6.5(E) for information on the contents of PPOs and Section 7.5(B) for information on firearms restrictions.

4. Effect of a Party's Failure to Attend a Scheduled Hearing

If the **petitioner** fails to attend a hearing scheduled on the PPO petition, the court may *either* adjourn and reschedule the hearing *or* dismiss the petition. MCR 3.705(B)(4).

> **Note:** Domestic abusers may use coercive measures to impede their intimate partners' participation in court proceedings. See Sections 1.6(C) and 7.6(B) for more discussion of factors that may cause petitioners to abandon PPO actions.

If the **respondent** fails to appear at a hearing on a PPO petition and the court determines that the petitioner made diligent attempts to serve the respondent, whether the respondent was served or not, the PPO may be entered without further notice to the respondent if the court determines that the petitioner is entitled to relief. MCR 3.705(B)(5).

E. Required Provisions in a PPO

*MCR 3.706(A) provides similar requirements.

If the court grants a PPO petition restraining a respondent age 18 or older, MCL 600.2950(11) and MCL 600.2950a(8) require that the order contain the following information, in a single form "to the extent practicable":*

- A statement that the PPO has been entered to enjoin or restrain conduct listed in the order. MCL 600.2950(11)(a) and MCL 600.2950a(8)(a).
- A statement regarding the penalties for violation of a PPO. *Id.*
  - If the respondent is age 17 or older, the PPO must state that a violation will subject the respondent to immediate arrest and to the civil and criminal contempt powers of the court, and that if the respondent is found guilty of criminal contempt, he or she shall be imprisoned for not more than 93 days and may be fined not more than $500.00. MCL 600.2950(11)(a)(*i*), MCL 600.2950a(8)(a)(*i*), and MCR 3.706(A)(3)(a).
  - If the respondent is less than 17 years of age, the PPO must state that a violation will subject the respondent to immediate apprehension or being taken into custody and to the dispositional alternatives listed in the Juvenile Code, MCL 712A.18.* MCL 600.2950(11)(a)(*ii*), MCL 600.2950a(8)(a)(*ii*), and MCR 3.706(A)(3)(b).

*See Section 8.11(I) for more information on dispositional alternatives under the Juvenile Code.

- A statement that the PPO is "effective and immediately enforceable anywhere in this state when signed by a judge, and that, upon service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States." MCL 600.2950(11)(b) and MCL 600.2950a(8)(b). See also MCR 3.706(A)(2).
- A statement listing the type or types of conduct enjoined. MCL 600.2950(11)(c) and MCL 600.2950a(8)(c). See also MCR 3.706(A)(1). In listing the conduct enjoined, the following principles are helpful:
  - The prohibited acts listed in MCL 600.2950(1) and in the criminal stalking statutes are not automatically incorporated into every PPO; a PPO restrains the respondent only from doing the particular acts specified in the order.*
  - **The most effective PPO provisions fully specify the precise conditions of relief granted to the petitioner.** Highly specific orders are easier to enforce because they give clear notice of the behavior that is prohibited, thus discouraging manipulative behavior by the parties. The order should be precise about times, locations, people, and duration. The court should avoid vague and unenforceable terms such as "reasonable."
- An expiration date stated clearly on the face of the order. MCL 600.2950(11)(d), MCL 600.2950a(8)(d), and MCR 3.706(A)(4). The following rules apply with regard to the duration of a PPO:
  - The statutes place no maximum limit on the duration of a PPO. **Ex parte orders must be valid for at least 182 days.** The statutes have no minimum time provision for the duration of orders entered after a hearing with notice to the respondent. MCL 600.2950(13) and MCL 600.2950a(10).
  - If the respondent is under age 18, the issuing court's jurisdiction continues over the respondent until the PPO expires, even if the expiration date is after the respondent's 18th birthday. MCL 712A.2a(3). Violations committed on or after the respondent's 17th birthday are subject to adult *penalties*, however. MCL 600.2950(11)(a)(*i*) and MCL 600.2950a(8)(a)(*i*). If a violation occurs after the respondent's 18th birthday, adult enforcement *procedures* apply, as well as adult penalties. MCL 712A.2a(3) and MCR 3.708(A)(2).
  - A specific expiration date is needed for LEIN entry.* Because orders of "permanent" or "99 years" duration are difficult for police to enforce, the order must state the specific month, day, and year of expiration.
- A statement that the PPO is "enforceable anywhere in Michigan by any law enforcement agency." MCL 600.2950(11)(e), MCL 600.2950a(8)(e), and MCR 3.706(A)(5).
- A statement that "[i]f the respondent violates the personal protection order in a jurisdiction other than this state, the respondent is subject to the enforcement procedures and penalties of the state, Indian tribe, or territory of the United States under whose jurisdiction the violation occurred." MCL 600.2950(11)(a)(*iii*), MCL 600.2950a(8)(a)(*iii*), and MCR 3.706(A)(5).

*Sections 6.3(B) and 6.4(C) describe the conduct that may be restrained in a PPO. Section 7.4 contains suggestions for promoting safety in PPO provisions.

*See Section 6.5(F) on LEIN entry.

- The name of the law enforcement agency that the court has designated for entering the PPO into the LEIN network. MCL 600.2950(11)(f), MCL 600.2950a(8)(f), and MCR 3.706(A)(6).
- If the PPO was issued ex parte, a statement that the restrained person may move to modify or terminate it, and may request a hearing within 14 days after service or actual notice of the order.* The PPO must state that motion forms and filing instructions for this purpose are available from the court clerk. MCL 600.2950(11)(g), MCL 600.2950a(8)(g), and MCR 3.706(A)(7).

*See Section 6.7 on motions to modify or terminate.

In order to comply with the Full Faith and Credit provisions of 18 USC 2265, a court should also include the following information in the personal protection order:

- A statement that the respondent had notice and an opportunity to be heard.
- Citations for the statutes upon which the order is based.
- The court's telephone number.
- A statement indicating that the order complies with the Full Faith and Credit provision of 18 USC 2265.
- A statement indicating that in addition to any state law or tribal sanction, a violation of the order may be subject to prosecution for such federal crimes as firearms possession, interstate travel to commit domestic violence, interstate stalking, and interstate violation of a PPO.

Note: The court should also indicate the grounds for issuing the PPO to help facilitate enforcement of federal firearms restrictions.* See Section 6.5(D)(3).

*See Section 7.5(B) and Chapter 9 for information on firearms restrictions.

F. Entry Into LEIN System

After issuance of a PPO, the clerk of the court has the following responsibilities to facilitate entry of the PPO and other related documents into the Law Enforcement Information Network (LEIN) system:

- Immediately upon issuance, and without requiring proof of service, the court clerk must file a true copy of the PPO with the court-designated law enforcement agency that will enter it into the LEIN network. MCL 600.2950(15)(a) and MCL 600.2950a(12)(a).
- The court clerk must provide the petitioner with no less than two true copies of the PPO and inform the petitioner that he or she may take a copy to the designated law enforcement agency for entry into the LEIN network.* MCL 600.2950(15)(b), (16) and MCL 600.2950a(12)(b), (13). The fact that the petitioner may take a copy of the PPO to a law enforcement agency for LEIN entry does *not* relieve the court clerk of the responsibility for doing so.
- The court clerk must notify the designated law enforcement agency upon receipt of proof of service on the restrained person. MCL 600.2950(19)(a) and MCL 600.2950a(16)(a).

*Section 7.6(D) discusses the court's response to the possibility that the petitioner may alter the PPO.

- The court clerk must notify the designated law enforcement agency if the court terminates, modifies, or extends the PPO.* MCL 600.2950(19)(b) and MCL 600.2950a(16)(b).

*See Section 6.7 on termination, extension, and modification of a PPO.

The PPO statutes do not specify any particular law enforcement agency that must be designated for purposes of LEIN entry. In choosing an agency, a court might consider the need for immediate enforcement of the PPO and ready access to information by police officers in the area where the petitioner is living. The Advisory Committee for this chapter of the benchbook suggests that courts communicate with local law enforcement agencies to determine the best agency for LEIN entry. Factors the court might consider in designating an agency include 24-hour accessibility of information, and the availability of a central dispatch.

The LEIN policy council recommends that the PPO contain the following information:

- Respondent's name.
- The specific month, day, and year of expiration. PPOs with specific date provisions are more readily enforced than are orders of "permanent" or "99 years" duration. If the court wishes its order to be effective for a long period of time, the Advisory Committee for this chapter of the benchbook suggests that it list a specific date 99 years from the date of issuance.
- Physical description of the respondent, e.g., height, weight, race, sex, hair color, eye color. Although information regarding race and sex is required, most jurisdictions will accept approximate physical descriptions for LEIN entry.
- Date of birth or age of respondent. In most jurisdictions, an approximate age or date of birth will suffice for LEIN entry.
- Other identifying information, e.g., scars, tattoos, physical deformities, nicknames.
- The respondent's social security and driver's license numbers, if known. This information is helpful, but not required for LEIN entry.

Although the LEIN policy council discourages local agencies from requiring additional information for LEIN entry, some agencies may nonetheless do so. The Advisory Committee suggests that courts communicate with the agency it designates to determine whether any different or additional information is required.

> **Note:** In cases where the petitioner cannot provide the respondent's address, some courts request local law enforcement agencies to look up this information in the Law Enforcement Information Network (LEIN) system. Because disclosure of any LEIN information to any non-criminal justice agency is a misdemeanor (MCL 28.214(3)) courts following this practice should take care not to include the respondent's address in the petitioner's copy of the PPO. Address information obtained from the LEIN system should only be included on the copy given to a

law enforcement agency for purposes of LEIN entry or service of the PPO. The document containing the respondent's address should then be designated non-public information and treated as such for purposes of public access.

G. Other Notices by the Clerk of the Court

*See Section 6.5(F) on LEIN entry.

In addition to notifying the designated law enforcement agency for purposes of LEIN entry,* the clerk of the court that issues a PPO is required to make the following notices "immediately upon issuance and without requiring a proof of service on the individual restrained or enjoined," pursuant to MCL 600.2950(15)(c)-(f) and MCL 600.2950a(12)(c)-(f):

> "(c) If respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency, if known, about the existence of the personal protection order.
>
> "(d) If the personal protection order prohibits respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board in respondent's county of residence about the existence and contents of the personal protection order.
>
> "(e) If the respondent is identified in the pleadings as a department of corrections employee, notify the state department of corrections about the existence of the personal protection order.
>
> "(f) If the respondent is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located about the existence of the personal protection order."

H. Service of the Petition and Order

*The clerk must notify the LEIN agency upon receipt of the proof of service. See Section 6.5(F).

The petitioner is responsible to arrange for service of the PPO (and the underlying petition, if the PPO was issued ex parte) on the respondent. Service may be made by any legally competent adult who is not a party to the action. MCR 2.103(A). The petitioner is also responsible for filing the proof of service with the clerk of the court issuing the PPO. MCL 600.2950(18), MCL 600.2950a(15), MCR 3.705(A)(4), and MCR 3.706(D).*

> **Note:** A PPO is effective and enforceable upon a judge's signature without written or oral notice to the respondent, so that failure to make service does not affect the PPO's validity or effectiveness. MCR 3.705(A)(4) and 3.706(D). Nonetheless, the petitioner should have the respondent served with the PPO if at all possible because service facilitates its enforcement both in Michigan and in

other states. See Section 8.5 regarding the impact of service on enforcement in Michigan. Section 8.13(A)(2) addresses notice requirements for interstate enforcement of a PPO.

Pursuant to MCR 3.705(A)(4) and 3.706(D), service of the PPO may be made as provided in MCR 2.105(A):

- By delivery to the respondent personally; or
- By registered or certified mail, return receipt requested, and delivery restricted to the addressee. Service is made when the respondent acknowledges receipt of the mail. A copy of the return receipt signed by the respondent must be attached to the proof showing service.

If the respondent is under age 18, and the whereabouts of the respondent's parent or parents, guardian, or custodian is known, service must also be similarly made on one of these individuals. MCR 3.706(D).

On an appropriate showing, the court may allow service of the petition and order in another manner as provided in MCR 2.105(I). MCR 3.705(A)(4) and 3.706(D). MCR 2.105(I) provides:

> "(1) On a showing that service of process cannot reasonably be made as provided . . . the court may by order permit service of process to be made in any other manner reasonably calculated to give the [respondent] actual notice of the proceedings and an opportunity to be heard.
>
> "(2) A request for an order under the rule must be made in a verified motion dated not more than 14 days before it is filed. The motion must set forth sufficient facts to show that process cannot be served under this rule and must state the [respondent's] address or last known address, or that no address of the [respondent] is known. If the name or present address of the [respondent] is unknown, the moving party must set forth facts showing diligent inquiry to ascertain it. A hearing on the motion is not required unless the court so directs.
>
> "(3) Service of process may not be made under this subrule before entry of the court's order permitting it."

If the respondent has not been served, a law enforcement officer* or clerk of the court may make service as follows:

*State Police officers may serve a PPO. MCL 28.6(5).

> "If the individual restrained or enjoined has not been served, a law enforcement officer or clerk of the court who knows that a personal protection order exists may, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual

> restrained or enjoined may obtain a copy of the order. . . ." MCL 600.2950(18) and MCL 600.2950a(15).

*More information about this procedure is found in Section 8.5.

If the respondent has not been served and a law enforcement officer is called to the scene of an alleged violation of the PPO, MCL 600.2950(22) and MCL 600.2950a(19) provide that the officer may give the respondent oral notice of the PPO.* If oral notice is made in this manner, the law enforcement officer must file proof of the notification with the court. MCR 3.706(E). To ensure LEIN entry, the court clerk must then notify the designated law enforcement agency upon receipt of the proof of service. MCL 600.2950(19)(a) and MCL 600.2950a(16)(a).

Fees for service of a PPO may violate provisions of the federal Violence Against Women Act, 42 USC 3796gg-3796gg-5, under which Michigan receives financial assistance for developing and strengthening effective law enforcement and prosecution strategies and victim services in cases involving violent crimes against women. To be eligible to receive federal grants under this program, a state must certify that its "laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence offense, *that the victim bear* the costs associated with the filing of criminal charges against the domestic violence offender, or *the costs associated with the issuance or service of a* warrant, *protection order*, and witness subpoena (arising from the incident that is the subject of the arrest or criminal prosecution.)" 28 CFR 90.15(a)(1).

I. Appeal From Issuance or Denial of a PPO

Regarding appeals from issuance or denial of a PPO, MCR 3.709 provides:

*"Minor personal protection action" refers to a PPO action in which the respondent is under age 18. MCR 3.702(6)-(7).

> "(A) Rules Applicable. Except as provided by this rule, appeals involving personal protection order matters must comply with subchapter 7.200. Appeals involving minor personal protection actions under the Juvenile Code must additionally comply with MCR 3.993.*
>
> "(B) From Entry of Personal Protection Order.
>
> "(1) Either party has an appeal of right from
>
> (a) an order granting or denying a personal protection order after a hearing under subrule 3.705(B)(6), or*
>
> (b) the ruling on respondent's first motion to rescind or modify the order if an ex parte order was entered.
>
> "(2) Appeals of all other orders are by leave to appeal."

*See Section 6.5(D) for information on a hearing pursuant to MCR 3.705(B)(6).

MCR 3.993 provides in pertinent part:

"(A) The following orders are appealable to the Court of Appeals by right:

"(1) an order of disposition placing a minor under the supervision of the court or removing the minor from the home,

* * *

"(3) any order required by law to be appealed to the Court of Appeals, and

"(4) any final order.

"(B) All orders not listed in subrule (A) are appealable to the Court of Appeals by leave.

6.6 Dismissal of a PPO Action

Dismissals of PPO actions are governed by MCR 3.704 and 3.705(A)(5) and (B). These rules apply to:

- Voluntary and involuntary dismissals of PPO actions,
- Domestic relationship and non-domestic stalking petitions, regardless of the age of the petitioner, and
- Actions with adult respondents and respondents under age 18.*

*See MCR 3.981 on the applicability of subchapter 3.700 of the court rules to PPOs involving a respondent under age 18.

A. Involuntary Dismissal

An involuntary dismissal of a PPO action can *only* be initiated by the court under the following circumstances:

- The court has determined after interviewing the petitioner that the petitioner's claims are sufficiently without merit that the action should be dismissed without a hearing. MCR 3.705(A)(5), (B)(1).
- The petitioner has failed to attend a hearing scheduled on the petition. In this situation, the court may *either* adjourn and reschedule the hearing *or* dismiss the petition. MCR 3.705(B)(4).

The court rules require judicial action for involuntary dismissal of a PPO action to permit assessment of coercion or danger to the petitioner; therefore, court clerks should not sign PPO dismissals without explicit court direction on a particular petition. Factors such as coercion, lack of information, or belief that the abuse will stop may cause a petitioner's failure to appear at a court proceeding. For more discussion of factors that cause petitioners to abandon PPO proceedings, see Sections 1.6(C) and 7.6(B).

The respondent is not permitted to move for dismissal of a PPO action prior to issuance of the order. MCR 3.704.

PPO actions are not subject to dismissal for no progress or failure to serve a respondent under MCR 2.502 or MCR 2.102(E).* Moreover, the court rules governing PPO actions make no provision for court clerks to sign dismissals of PPO petitions prior to issuance of the order.

*Note that failure to serve the PPO does not affect its validity or effectiveness. MCR 3.705(A)(4) and 3.706(D).

The Advisory Committee for this chapter of the benchbook suggests that the inapplicability of the no progress court rules should not prevent the court from administratively closing PPO cases for statistical purposes. When the court administratively closes a case, any PPO issued will remain in effect until its expiration date, and if modification is necessary, the case may be reopened on the merits. The Committee notes that:

- The case may be closed 21 days after a PPO petition is denied if no hearing is requested. MCR 3.705(A)(5).
- If a PPO petition is granted, the case may be closed 14 days after the date of service. See MCL 600.2950(13) and MCL 600.2950a(10), which give the respondent 14 days from the date of service or actual notice to file a motion to terminate or modify the PPO.

Because MCR 3.703(A) requires a PPO petition to be brought as an independent action, a PPO should not be dismissed upon conclusion of a related matter (e.g., a divorce) between the parties. By abrogating the provisions in MCL 600.2950(1) and MCL 600.2950a(1) that would permit a PPO petition to be joined as a claim with another action or filed as a motion in a pending action, MCR 3.703(A) prevents unintentional dismissal of the PPO upon conclusion of a matter in which it might otherwise have been filed or joined.

Appeals from involuntary dismissals are by leave granted. MCR 3.709(B) provides:*

*See Section 6.5(I) for additional rules governing appeals in cases involving a respondent under age 18.

> "(1) Either party has an appeal of right from
>
> > "(a) an order granting or denying a personal protection order after a hearing . . . or
> >
> > "(b) the ruling on respondent's first motion to rescind or modify the order if an ex parte order was entered.
>
> "(2) *Appeals of all other orders are by leave to appeal*." [Emphasis added.]

B. Voluntary Dismissal

MCR 3.704 permits the petitioner to move for dismissal of a PPO action prior to the issuance of an order. There is no fee for filing this motion. *Id.* Because most PPO petitions request ex parte relief, and because courts must take action on such petitions within 24 hours after filing (MCR 3.705(A)(1)), cases involving voluntary dismissal of the petition will be relatively rare. If the petition is set for hearing, however, a petitioner may move the court to dismiss

the petition before the hearing takes place. MCR 3.704 makes no provision for the respondent to move for dismissal of a PPO action prior to issuance of the order.

Because MCR 3.704 provides that a PPO action "may only be dismissed upon motion by the petitioner," the court should *not* permit:

- Dismissal without a court order upon filing of a notice of dismissal as described in MCR 2.504(A)(1)(a); or
- Stipulated dismissals without a court order as described in MCR 2.504(A)(1)(b).

The court rules require judicial action for dismissal of a PPO action to permit assessment of coercion or danger to the petitioner; therefore, court clerks should not sign PPO dismissals without explicit court direction on a particular petition. Factors such as coercion, lack of information, or belief that the abuse will stop may cause a petitioner to abandon a court proceeding. For more discussion these factors, see Sections 1.6(C) and 7.6(B).

6.7 Motion to Modify, Terminate, or Extend a PPO

Modification or termination of a PPO is governed by the PPO statutes and by MCR 3.707. These authorities apply to:

- Domestic relationship and non-domestic stalking petitions, regardless of the age of the petitioner, and
- Actions with adult parties and parties under age 18.* However, parties who are minors or legally incapacitated individuals must proceed through a next friend. MCR 3.707(C). MCR 3.703(F) governs proceedings through a next friend and is discussed in Section 6.5(A)(1).

*See MCR 3.981 on the applicability of subchapter 3.700 of the court rules to PPOs involving a respondent under age 18.

A. Time and Place to File Motion

The following timelines apply to motions to modify, terminate, or extend a PPO. There are no motion fees for filing any of these motions. MCR 3.707(D) and MCL 600.2529(1)(e).

1. Petitioner's Motion to Modify or Terminate

Under MCR 3.707(A)(1)(a), a petitioner may file a motion to modify or terminate a PPO and request a hearing at any time after the PPO is issued. Although an earlier version of MCR 3.707 required that a motion to modify or terminate a PPO had to be filed with the issuing court, the current version of MCR 3.707(A)(1)(a) does not specify where the motion must be filed.

2. Petitioner's Motion to Extend the PPO

The petitioner may file an ex parte motion to extend the effectiveness of a PPO, without a hearing, by requesting a new expiration date. This motion must be filed with the court that issued the PPO no later than three days prior to the order's expiration date. Failure to timely file this motion does not preclude the petitioner from commencing a new PPO action regarding the same respondent. MCR 3.707(B)(1).

The court must act on the petitioner's motion to extend the PPO within three days after it is filed. *Id*.

3. Respondent's Motion to Modify or Terminate the PPO

*See also MCL 600.2950(13) and MCL 600.2950a(10).

Under MCR 3.707(A)(1)(b), the respondent may file a motion to modify or terminate a PPO and request a hearing within 14 days after receipt of service or actual notice of the PPO. This 14-day period may be extended upon good cause shown.* Unlike an earlier version of MCR 3.707 that required that a motion to modify or terminate a PPO be filed with the issuing court, the current version of MCR 3.707(A)(1)(a) does not specify where the respondent's motion must be filed.

> **Note:** As a practical matter, the court may have difficulty determining when the PPO was served, which in turn causes difficulty in determining whether the respondent's motion for modification or termination was timely filed. Given the practical difficulties of determining when service occurs, and the "good cause" exception to the statutory 14-day limit, court clerks should be instructed to accept respondents' motions for filing even if they are submitted more than 14 days after service. This practice will allow a judicial determination of whether "good cause" exists to extend the 14-day filing period.

B. Time to Hold Hearings

Under MCR 3.707(A)(2), the court must schedule and hold a hearing on a motion to terminate or modify a PPO within 14 days of the filing of the motion. See also MCL 600.2950(14) and MCL 600.2950a(11). However, the court must schedule the hearing within five days after the filing of the motion in cases where the PPO prohibits the respondent from purchasing or possessing a firearm, *and* the respondent is licensed to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment. *Id.* Occupations included in these provisions are:

- A police officer certified under MCL 28.601-28.616;
- A sheriff;
- A deputy sheriff or a member of the Michigan Department of State Police;

- A local corrections officer;
- A Department of Corrections employee; or
- A federal law enforcement officer who carries a firearm during the normal course of his or her employment.

MCL 600.2950a(2) and (11) and MCL 600.2950(2) and (14).

A "federal law enforcement officer" means "an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is the enforcement of laws of the United States." MCL 600.2950(30)(b) and MCL 600.2950a(29)(a).

If the respondent is under age 18, the court may *not* assign a referee to preside at a hearing on the modification or termination of a PPO. MCR 3.912(A)(4).* A judge must preside at proceedings to modify or terminate a minor PPO. *Id.*

*Nonattorney referees may conduct preliminary hearings for enforcement of a PPO. Referees licensed to practice law may preside at a hearing to enforce a minor PPO. MCR 3.913(A)(2)(d). See Section 8.11(B).

C. Burden of Proof

In *Pickering v Pickering*, 253 Mich App 694, 699 (2002), the Court of Appeals held that the burden of justifying the continuation of an ex parte PPO is on the petitioner. Because the PPO statute and court rules governing motions to rescind or terminate PPOs are silent as to the burden of proof, MCR 3.310(B)(5) is controlling.

MCR 3.310(B)(5) provides, in part:

> ". . . At a hearing on a motion to dissolve a restraining order granted without notice, the burden of justifying continuation of the order is on the applicant for the restraining order whether or not the hearing has been consolidated with a hearing on a motion for a preliminary injunction or an order to show cause."

In *Pickering*, the Court of Appeals noted that the burden of proof has two aspects: the "burden of persuasion" and the "burden of going forward with evidence." 253 Mich App at 698-699. In the context of a PPO granted ex parte, the "burden of persuasion" is the burden of justifying the continuation of the PPO. The "burden of persuasion" requires the petitioner to demonstrate that the PPO should continue because it is "just, right, or reasonable." 253 Mich App at 699. The Court of Appeals concluded that there was reasonable cause to justify the initial entry of the order and that the respondent's conduct was of a continuous nature. 253 Mich App at 700. Regarding the "burden of going forward with the evidence," the Court stated in a footnote that "[a]lthough the trial court did not offend MCR 3.310(B)(5) by placing the burden of first coming forward with evidence on respondent, we believe it would be more appropriate in these hearings to have the petitioner—who has the burden of justification throughout the proceedings—to also be the party to first come forward with evidence." 253 Mich App at 700, n 1.

D. Service of Motion Papers

1. Motion to Modify or Terminate a PPO

MCR 3.707(A)(1)(c) requires the moving party to serve the motion and notice of hearing at least seven days before the hearing date. However, if the moving party is a respondent who is entitled to an expedited hearing due to the impact of a firearms restriction on his or her employment, notice one day prior to the hearing is sufficient. *Id*. See Section 6.7(B) on the circumstances requiring an expedited hearing.

MCR 3.707(A)(1)(c) further requires that service of the motion and notice of hearing be effected by registered or certified mail, return receipt requested, and delivery restricted to the addressee, pursuant to MCR 2.105(A)(2). On an appropriate showing, the court may allow service in another manner under MCR 2.105(I), which provides:

> "(1) On a showing that service of process cannot reasonably be made as provided . . . the court may by order permit service of process to be made in any other manner reasonably calculated to give the [respondent] actual notice of the proceedings and an opportunity to be heard.
>
> "(2) A request for an order under the rule must be made in a verified motion dated not more than 14 days before it is filed. The motion must set forth sufficient facts to show that process cannot be served under this rule and must state the [respondent's] address or last known address, or that no address of the [respondent] is known. If the name or present address of the [respondent] is unknown, the moving party must set forth facts showing diligent inquiry to ascertain it. A hearing on the motion is not required unless the court so directs.
>
> "(3) Service of process may not be made under this subrule before entry of the court's order permitting it."
>
> **Note:** To prevent a party from manipulating a PPO proceeding by intercepting mail sent from the court, the court might make careful inquiry before permitting first class mail service of court documents on the parties and witnesses to the action.

MCR 3.707 does not address service of a motion to modify or terminate a PPO in cases involving a respondent under age 18. However, the Advisory Committee for this chapter of the benchbook suggests that a good practice in these cases might be to make service on both the respondent and the respondent's parent or parents, guardian, or custodian, if practicable. See MCR 3.705(B)(2) (service of notice of hearing on issuance of PPO on respondent's parent/guardian/custodian) and MCR 3.706(D) (service of PPO on respondent's parent/guardian/custodian).

If the court grants modification or termination, the modified or terminated order must be served under MCR 2.107, which permits service by delivery to a party or an attorney for a party, or by first class mail. MCR 3.707(A)(3).

2. Notice of Extension of a PPO

If the expiration date on a PPO is extended, an amended order must be entered. The order must be served on the respondent as provided in MCR 2.107, which permits service by delivery to a party or an attorney for a party, or by first class mail. MCR 3.707(B)(2).

E. LEIN Entry

If the court modifies or terminates a PPO, or if the expiration date on a PPO is extended, the clerk must immediately notify the designated law enforcement agency of the court's order for entry into the LEIN system. MCR 3.707(A)(3), MCR 3.707(B)(2), MCL 600.2950(19)(b), and MCL 600.2950a(16)(b).

F. Appeals From Decisions on Motions to Terminate or Modify a PPO

If the PPO was entered ex parte, MCR 3.709(B)(1)(b) provides for an appeal of right from the ruling on the respondent's first motion to terminate or modify the order. Appeals in all other cases are by leave to appeal. MCR 3.709(B) provides:

> "(1) Either party has an appeal of right from
>
> > "(a) an order granting or denying a personal protection order after a hearing . . . or
> >
> > "(b) the ruling on respondent's first motion to rescind or modify the order if an ex parte order was entered.
>
> "(2) *Appeals of all other orders are by leave to appeal*." [Emphasis added.*]

*See Section 6.5(I) for additional rules governing appeals in cases involving a respondent under age 18.

6.8 A Word About Peace Bonds

The peace bond statutes (MCL 772.1-772.15) specifically address domestic violence situations, thus providing the only civil remedy against domestic violence available from the district court. However, the Advisory Committee for this chapter of the benchbook has concluded that PPOs afford more complete protection than do peace bonds. In the Committee's opinion, peace bonds are better suited for dealing with disputes among unrelated parties than for cases involving domestic violence.* The Committee's opinion is based upon the following characteristics of peace bond proceedings:

*See Findlater & Van Hoek, *Prosecutors & Domestic Violence: Local Leadership Makes a Difference,* 73 Mich Bar J 908, 910 (1994). On peace bonds generally, see *Gosnell v Twelfth District Court*, 234 Mich App 326 (1999) (statutes found constitutional) and *In re Rupert*, 205 Mich App 474 (1994) (addressing procedures).

- **Peace bonds cannot be issued ex parte in emergency situations.**

  Peace bonds are issued after the aggrieved party files a complaint in district court alleging that a person has threatened to commit an offense against person or property. Upon filing of the complaint, the judge must examine on oath the complainant and any other witnesses. MCL 772.2. If the judge determines that "there is just reason to believe the person will commit" an offense against person or property, the judge may enter an order directing the person to appear within seven days. MCL 772.3. If the person named in the complaint does not agree to post a recognizance, the court must conduct a trial to determine if a recognizance will be required. The person named in the complaint is entitled to a jury trial. MCL 772.4(1).

  Domestic violence may escalate when the abused individual takes steps to escape the abuse. Moreover, violence is more likely when the abuser has free access to an intimate partner.* The foregoing peace bond proceedings may increase the danger, for they require notice to the abuser of potential judicial intervention, followed by a waiting period of up to seven days — perhaps in the same household with the abuser — before the court takes action on the complaint. This waiting period, as well as the period required to conduct a jury trial, may give the abuser time and opportunity to injure an intimate partner, or to coerce the partner to abandon the proceedings. In contrast, the PPO statutes authorize the court to issue ex parte relief without notice to the abuser in emergency situations. See Section 6.5(C).

*These factors may indicate that the abuser is at risk for committing lethal violence. See Section 1.4(B).

- **Peace bonds cannot be entered into the LEIN network.**

  MCL 772.13 requires the court clerk to file a true copy of a peace bond with the law enforcement agency or agencies having jurisdiction of the area in which the complainant resides or works. The peace bond statutes make no provision for entry of the bond into the LEIN system, however; LEIN entry is only required in cases where the court has issued an arrest warrant pursuant to MCL 772.3 or MCL 772.13b. Accordingly, if the complainant flees the jurisdiction where the peace bond is on file, law enforcement officers in the new jurisdiction will have no way of verifying the existence of the peace bond. The PPO statutes better protect persons who have relocated, by requiring the court clerk to notify a designated law enforcement agency of the PPO immediately upon issuance of the order.

The designated law enforcement agency is in turn responsible for entering the PPO into the LEIN system. See Section 6.5(F).

- **The court may only use criminal contempt sanctions to enforce a peace bond in limited categories of domestic relationships**.

  In addition to forfeiting the bond, a person who violates an order to keep the peace in certain domestic relationships is subject to the contempt powers of the court. Such offenders may be imprisoned for not more than 90 days and/or fined a maximum of $500.00. MCL 772.14a. However, criminal contempt sanctions only apply where the offender has breached the peace toward: a spouse or former spouse; a person residing or having resided in the same household with the offender; or, a person with whom the offender has had a child in common. The criminal contempt sanctions imposed under the PPO statutes apply to more categories of offenders, including persons involved in present or past dating relationships with the victim, and any offender who stalks the victim. See Sections 6.3(A) and 6.4(A).